

CATHERINE M. CORFEE SBN 155064
CORFEE STONE & ASSOCIATES
P.O. Box 1098
Carmichael, CA 95609
Telephone: (916) 487-5441
Facsimile: (916) 487-5440

ATTORNEYS FOR DEFENDANT
Keet Nehran

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICK CONNALLY,)	Case No.: 3:15-cv-00601-LB
)	
Plaintiff,)	ANSWER OF DEFENDANT KEET
)	NEHRAN TO COMPLAINT
vs.)	
)	
RINO FAIRFAX GAS; KEET NEHRAN; and)	JURY TRIAL DEMANDED
AZUCENA FERRARO and GIAN CARLO)	
FERRARO, individuals dba FERRARO)	
FAIRFAX SERVICE,)	
)	
Defendants.)	
)	

Defendant Keet Nehran ("Defendant"), by and through his attorneys, Corfee Stone & Associates, hereby responds to the Complaint. Defendant reserves the right to amend, add, change facts, evidence, and/or strike affirmative defenses as discovery ensues or due to any inadvertence. Defendant has not conducted any discovery and only knows about the few facts alleged in Plaintiff's complaint, which in no way describe how each alleged access matter precluded him from using and enjoying the facility. Therefore, Defendant has applied his affirmative defenses broadly and will voluntarily strike and amend those which may not apply or add new ones which apply. Defendant further reserves the right to raise affirmative defenses and admit such as a defense at trial, which are subsequently discovered through the discovery process.

- 1 1. Answering the allegations of Paragraph 1, Defendant denies the allegations.
- 2 2. Answering the allegations of Paragraph 2, Defendant denies the allegations.
- 3 3. Answering the allegations of Paragraph 3, Defendant admits only that this Court has
- 4 jurisdiction under the “readily achievable standard” of the Americans with Disabilities Act of
- 5 1990, 42 U.S.C. § 12101 *et seq.* Plaintiff may lack standing, which is Article III jurisdiction.
- 6 Defendant denies all other allegations.
- 7 4. Answering the allegations of Paragraph 4, Defendant admits venue is proper in this
- 8 Court.
- 9 5. Answering the allegations of Paragraph 5, Defendant currently lacks sufficient
- 10 knowledge to respond to the allegations, and on this basis, denies the allegations.
- 11 6. Answering the allegations of Paragraph 6, including all of its subparts, statements of
- 12 law and policy are not allegations that Defendant can respond to. The cited law speaks for
- 13 itself. Defendant denies all other allegations.
- 14 7. Answering the allegations of Paragraph 7, Defendant denies the allegations.
- 15 8. Answering the allegations of Paragraph 8, Defendant admits that he has an
- 16 ownership interest in the property.
- 17 9. Answering the allegations of Paragraph 9, Defendant admits that he has an
- 18 ownership interest in the business.
- 19 10. Answering the allegations of Paragraph 10, Defendant admits that the business is a
- 20 public accommodation. Defendant denies all other allegations.
- 21 11. Answering the allegations of Paragraph 11, Defendant denies the allegations.
- 22 12. Answering the allegations of Paragraph 12, statements of law and policy are not
- 23 allegations that Defendant can respond to. The cited law speaks for itself. Defendant denies all
- 24 other allegations.
- 25 13. Answering the allegations of Paragraph 13, Defendant denies the allegations.
- 26 14. Answering the allegations of Paragraph 14, Defendant denies the allegations.
- 27 15. Answering the allegations of Paragraph 15, Defendant currently lacks sufficient
- 28 knowledge and information to respond to the allegations, and on this basis, denies the

1 allegations. Defendant denies all other allegations.

2 16. Answering the allegations of Paragraph 16, Defendant denies the allegations.

3 17. Answering the allegations of Paragraph 17, Defendant denies the allegations.

4 18. Answering the allegations of Paragraph 18, Defendant denies the allegations.

5 19. Answering the allegations of Paragraph 19, Defendant denies the allegations.

6 20. Answering the allegations of Paragraph 20, Defendant denies the allegations.

7 21. Answering the allegations of Paragraph 21, Defendant denies the allegations.

8 22. Answering the allegations of Paragraph 22, Defendant denies the allegations.

9 23. Answering the allegations of Paragraph 23, including all of its subparts, Defendant
10 denies the allegations.

11 24. Answering the allegations of Paragraph 24, including all of its subparts, Defendant
12 denies the allegations.

13 25. Answering the allegations of Paragraph 25, Defendant denies the allegations.

14 26. Answering the allegations of Paragraph 26, Defendant denies the allegations.

15 27. Answering the allegations of Paragraph 27, Defendant denies the allegations.

16 28. Answering the allegations of Paragraph 28, Defendant denies the allegations.

17 29. Answering the allegations of Paragraph 29, Defendant denies the allegations.

18 30. Answering the allegations of Paragraph 30, Defendant denies the allegations.

19 31. Answering the allegations of Paragraph 31, Defendant denies the allegations.

20 32. Answering the allegations of Paragraph 32, Defendant denies the allegations.

21 33. Answering the allegations of Paragraph 33, Defendant denies the allegations.

22 34. Answering the allegations of Paragraph 34, Defendant denies the allegations.

23 35. Answering the allegations of Paragraph 35, Defendant denies the allegations.

24 36. Answering the allegations of Paragraph 36, Defendant denies the allegations.

25 37. Answering the allegations of Paragraph 37, Defendant denies the allegations.

26 38. Answering the allegations of Paragraph 38, Defendant denies the allegations.

27 39. Answering the allegations of Paragraph 39, Defendant denies the allegations.

28 40. Answering the allegations of Paragraph 40, Defendant denies the allegations.

1 41. Answering the allegations of Paragraph 41, Defendant denies the allegations.

2 42. Answering the allegations of Paragraph 42, Defendant denies the allegations.

3 43. Answering the allegations of Paragraph 43, Defendant denies the allegations.

4 44. Answering the allegations of Paragraph 44, Defendant denies the allegations.

5 45. Answering the allegations of Paragraph 45, Defendant denies the allegations.

6 46. Answering the allegations of Paragraph 46, Defendant denies the allegations.

7 47. Answering the allegations of Paragraph 47, Defendant denies the allegations.

8 48. Answering the allegations of Paragraph 48, Defendant denies the allegations.

9 49. Defendant realleges and incorporates his responses to paragraphs 1-48 as if
10 specifically pled herein.

11 50. Answering the allegations of Paragraph 50, statements of law and policy are not
12 allegations that Defendant can respond to. The cited law speaks for itself. Defendant denies all
13 other allegations.

14 51. Answering the allegations of Paragraph 51, statements of law and policy are not
15 allegations that Defendant can respond to. The cited law speaks for itself. Defendant denies all
16 other allegations.

17 52. Answering the allegations of Paragraph 52, statements of law and policy are not
18 allegations that Defendant can respond to. The cited law speaks for itself. Defendant denies all
19 other allegations.

20 53. Answering the allegations of Paragraph 53, statements of law and policy are not
21 allegations that Defendant can respond to. The cited law speaks for itself. Defendant denies all
22 other allegations.

23 54. Answering the allegations of Paragraph 54, statements of law and policy are not
24 allegations that Defendant can respond to. The cited law speaks for itself. Defendant denies all
25 other allegations.

26 55. Answering the allegations of Paragraph 55, Defendant denies the allegations.

27 56. Answering the allegations of Paragraph 56, Defendant denies the allegations.

28 57. Answering the allegations of Paragraph 57, Defendant denies the allegations.

1 58. Answering the allegations of Paragraph 58, Defendant denies the allegations.

2 59. Answering the allegations of Paragraph 59, Defendant denies the allegations.

3 60. Answering the allegations of Paragraph 60, Defendant denies the allegations.

4 61. Defendant realleges and incorporates his responses to paragraphs 1-60 as if
5 specifically pled herein.

6 62. Answering the allegations of Paragraph 62, statements of law and policy are not
7 allegations that Defendant can respond to. The cited law speaks for itself. Defendant denies all
8 other allegations.

9 63. Answering the allegations of Paragraph 63, statements of law and policy are not
10 allegations that Defendant can respond to. The cited law speaks for itself. Defendant denies all
11 other allegations.

12 64. Answering the allegations of Paragraph 64, statements of law and policy are not
13 allegations that Defendant can respond to. The cited law speaks for itself. Defendant denies all
14 other allegations.

15 65. Answering the allegations of Paragraph 65, Defendant denies the allegations.

16 66. Answering the allegations of Paragraph 66, Defendant denies the allegations.

17 67. Answering the allegations of Paragraph 67, Defendant denies the allegations.

18 68. Answering the allegations of Paragraph 68, Defendant denies the allegations.

19 69. Answering the allegations of Paragraph 69, Defendant denies the allegations.

20 70. Answering the allegations of Paragraph 70, Defendant denies the allegations.

21 71. Defendant realleges and incorporates his responses to paragraphs 1-70 as if
22 specifically pled herein.

23 72. Answering the allegations of Paragraph 72, statements of law and policy are not
24 allegations that Defendant can respond to. The cited law speaks for itself. Defendant denies all
25 other allegations.

26 73. Answering the allegations of Paragraph 73, Defendant denies the allegations.

27 74. Answering the allegations of Paragraph 74, Defendant denies the allegations.

28 75. Answering the allegations of Paragraph 75, Defendant denies the allegations.

1 76. Answering the allegations of Paragraph 76, Defendant denies the allegations.

2 77. Answering the allegations of Paragraph 77, Defendant denies the allegations.

3 78. Answering the allegations of Paragraph 78, Defendant denies the allegations.

4 79. Defendant realleges and incorporates his responses to paragraphs 1-78 as if
5 specifically pled herein.

6 80. Answering the allegations of Paragraph 80, statements of law and policy are not
7 allegations that Defendant can respond to. The cited law speaks for itself. Defendant denies all
8 other allegations.

9 81. Answering the allegations of Paragraph 81, statements of law and policy are not
10 allegations that Defendant can respond to. The cited law speaks for itself. Defendant denies all
11 other allegations.

12 82. Answering the allegations of Paragraph 82, Defendant denies the allegations.

13 83. Answering the allegations of Paragraph 83, Defendant denies the allegations.

14 84. Answering the allegations of Paragraph 84, Defendant denies the allegations.

15 85. Answering the allegations of Paragraph 85, Defendant denies the allegations.

16 **PRAYER**

17 Defendant denies that Plaintiff is entitled to any relief whatsoever, including all those
18 indicated in Paragraphs 1 through 3 of Plaintiff's prayer contained in Paragraph I, Paragraphs 1
19 through 8 of Plaintiff's prayer contained in Paragraph II, Paragraphs 1 through 5 of Plaintiff's
20 prayer contained in Paragraph III, and Paragraphs 1 through 8 of Plaintiff's prayer contained in
21 Paragraph IV.

22 **AFFIRMATIVE DEFENSES**

23 **FIRST AFFIRMATIVE DEFENSE**

24 [FAILURE TO STATE A CLAIM]

25 1. AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE
26 DEFENSE, Defendant alleges that the Complaint and each and every cause of action therein fail
27 to state a claim upon which relief may be granted for lack of facts regarding his alleged
28 intention to use and enjoy the facility and as to how each alleged barrier precluded his from

1 accessing it.

2 **SECOND AFFIRMATIVE DEFENSE**

3 [LACHES]

4 2. AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE
5 DEFENSE, Defendant alleges that Plaintiff's delay in asserting his allegations have resulted in
6 prejudice to Defendant and thus, Plaintiff should be denied relief under the doctrine of laches.

7 **THIRD AFFIRMATIVE DEFENSE**

8 [MITIGATION OF DAMAGES]

9 3. AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE
10 DEFENSE, Plaintiff failed to notify Defendant with specificity of how he was barred, how he
11 was injured, what caused his harm and to provide an opportunity for Defendant to voluntarily
12 address the matter before filing suit to likely resolve alleged access problems fairly and
13 therefore failed to reasonably mitigate his damages, especially by claiming deterrence damages.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 [STRUCTURALLY IMPRACTICABLE/UNDUE BURDEN /FINANCIALLY AND TECHNICALLY
16 INFEASIBLE/TOO EXPENSIVE/ALTERNATE & EQUIVALENT ACCESS]

17 4. AS AND FOR A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE
18 DEFENSE, Defendant is informed and believes that to meet the access requirements that
19 Plaintiff requests, such would be structurally impracticable or technically infeasible. Defendant
20 is informed and believes that proposed access changes would be an unnecessary, an undue
21 burden and/or financially infeasible based on future proposed construction/contractor bids and
22 Defendant's earnings, would be practically difficult and/or too expensive and are not required
23 by modern current access codes. Moreover, Defendant has accessibility as with alternative
24 methods and equivalent accessibility provided to the disabled, including alternative accessible
25 features which have been implemented to the maximum extent feasible.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 [AVOIDABLE CONSEQUENCES/MITIGATION OF DAMAGES]

28 5. AS AND FOR A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE

1 DEFENSE, Defendant alleges that Plaintiff failed to take reasonable steps in order to avoid any
2 further injury he may have suffered, and thus Plaintiff's claims and any recovery are limited by
3 the doctrine of avoidable consequences and/or the statute of limitations, and to the extent that
4 any damages could have been mitigated, such sums should be deducted from any award of
5 damages.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 [NOT READILY ACHIEVABLE]

8 6. AS AND FOR A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE
9 DEFENSE, Defendant is informed and believes that Plaintiff's proposed access changes are too
10 difficult, and are not easy to do.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 [NO WORK TO PRIMARY FUNCTION AREA]

13 7. AS AND FOR A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE
14 DEFENSE, Defendant is informed and believes that some and/or all work to the subject
15 FACILITY, if any, were not to a primary function area.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 [FUNDAMENTAL ALTERATION]

18 8. AS AND FOR AN EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE
19 DEFENSE, Defendant is informed and believes that any proposed access changes would
20 fundamentally alter the nature of the goods, service, FACILITY, privilege, advantage or
21 accommodation being offered.

22 **NINTH AFFIRMATIVE DEFENSE**

23 [NO STANDING]

24 9. AS AND FOR A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE
25 DEFENSE, Defendant alleges that Plaintiff lacks standing to maintain this action and each
26 cause of action contained in this action.

27 \\\

28 \\\

TENTH AFFIRMATIVE DEFENSE

[COMPARATIVE NEGLIGENCE]

10. AS AND FOR A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that the damages Plaintiff alleged he sustained were either wholly, or in part, negligently caused by persons, firms, corporations or entities other than this answering Defendant, and said negligence comparatively reduces the percentage of damages attributable, if any, by this answering Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

[UNCLEAN HANDS]

11. AS AND FOR AN ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant is informed and believes and thereon allege that the Doctrine of Unclean Hands bars Plaintiff's claims.

TWELFTH AFFIRMATIVE DEFENSE

[ESTOPPEL]

12. AS AND FOR A TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant is informed and alleges that Plaintiff is estopped from asserting the claims in the Complaint under the doctrine of estoppel because Plaintiff allegedly visited the subject facility on more than one occasion and did not complain of being denied access after the first visit to the subject facility, never followed up, failed to identify the exact barriers or injurers that Plaintiff allegedly suffered. Defendant relied on this for not making any access changes to the subject facility.

THIRTEENTH AFFIRMATIVE DEFENSE

[HEALTH & SAFETY]

13. AS AND FOR A THIRTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant is informed and alleges that Defendant is not required to permit Plaintiff to participate in or benefit from its goods, services, facilities, privileges, advantages and accommodations pursuant to 28 CFR §36.208 because Plaintiff's proposed barrier removals pose a direct threat to the health and safety of others.

FOURTEENTH AFFIRMATIVE DEFENSE

[LACK OF JURISDICTION]

14. AS AND FOR A FOURTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant is informed and allege lack of jurisdiction because there is no live case or controversy regarding Plaintiff's demands for injunctive relief as access improvements are complete or will be complete.

FIFTEENTH AFFIRMATIVE DEFENSE

[ASSUMPTION OF THE RISK]

15. AS AND FOR A FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff's complaint, and each claim therein, are barred by the doctrine of primary and secondary assumption of the risk.

SIXTEENTH AFFIRMATIVE DEFENSE

[STATUTES OF LIMITATIONS - AS TO STATE CLAIMS]

16. AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff's claim for relief is barred by the applicable statute of limitations, including California Civil Code section 340(3).

SEVENTEENTH AFFIRMATIVE DEFENSE

[PREEXISTING PHYSICAL OR MENTAL CONDITIONS]

17. AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges Plaintiff's claims for relief for damages are barred to the extent Plaintiff seek redress for physical and emotional injuries arising from preexisting physical or mental conditions.

EIGHTEENTH AFFIRMATIVE DEFENSE

[ALTERNATIVE METHOD FOR ACCESS]

18. AS AND FOR AN EIGHTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that the Complaint, and each purported claim for relief alleged therein, is barred in that Defendant provided alternative method for access to the facility.

\\

NINETEENTH AFFIRMATIVE DEFENSE

[NOT A BONA FIDE PATRON]

19. AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendants allege that Plaintiff is a vexatious litigant. Therefore, the Complaint, and each purported claim for relieve alleged therein, is barred because Plaintiff was not a bona fide patron of the facility. Instead, if Plaintiff visited the facility, he did so for purpose of instituting the instant litigation.

TWENTIETH AFFIRMATIVE DEFENSE

[FAILURE TO COMPLY WITH CC 55.4]

20. AS AND FOR A TWENTIETH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiff failed to comply with Civil Code 55.4 (SB 1608), which is mandatory for any accessibility statutes. Therefore, this Court lacks jurisdiction over the State claims.

TWENTY-FIRST AFFIRMATIVE DEFENSE

[CONSTRUCTION TOLERANCES]

21. AS AND FOR A TWENTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that any deviations from construction codes are within acceptable construction tolerances.

TWENTY-SECOND AFFIRMATIVE DEFENSE

[EQUIVALENT FACILITATION]

22. AS AND FOR A TWENTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant alleges that at all times relevant to the Complaint, Defendant made available to Plaintiff, as well as other similarly situated individuals, equivalent facilitation which provided full and equal access.

TWENTY-THIRD AFFIRMATIVE DEFENSE

[WAIVER]

23. AS AND FOR A TWENTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, Defendant is informed and believes that the Complaint, and the

1 whole thereof, is barred by the doctrine of waiver.

2 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

3 [ADDITIONAL AFFIRMATIVE DEFENSES]

4 24. AS AND FOR A TWENTY-FOURTH, SEPARATE AND DISTINCT
5 AFFIRMATIVE DEFENSE, Defendant alleges that it has no independent knowledge, as of the
6 filing of this Answer, of the facts allegedly constituting the cause of action in Plaintiff's
7 Complaint, and based thereon, hereby respectfully request leave of Court to amend this Answer
8 to include those affirmative defenses that are revealed during the course of discovery.

9
10 WHEREFORE, this Answering Defendant prays for judgment against Plaintiff as
11 follows:

- 12 (1) That Plaintiff takes nothing by reason of his Complaint;
13 (2) For such costs and expenses of suit incurred herein;
14 (3) Reasonable attorney's fees according to proof;
15 (4) For such other and further relief as the Court may deem just and proper.

16
17 Dated: April 24, 2015

CORFEE STONE & ASSOCIATES

18
19 /s/ Catherine M. Corfee

20 Catherine M. Corfee, Attorneys for all Defendants

21
22 **DEMAND FOR JURY TRIAL**

23 Defendant hereby demands a jury trial.

24
25 Dated: April 24, 2015

CORFEE STONE & ASSOCIATES

26
27 /s/ Catherine M. Corfee

28 Catherine M. Corfee, Attorneys for all Defendants